Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

ROBERT G. WARNOCK,

Petitioner

v.

NATIONAL FOOTBALL LEAGUE, ET AL.,

Respondent

On Petition For Writ Of Certiorari
To The Third Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does Petitioner Robert G. Warnock, a municipal taxpayer of Allegheny County Pennsylvania, purporting to sue in the United States District Court for the Western District of Pennsylvania "[o]n behalf of Allegheny County," have standing to assert an antitrust claim against Appellees, The National Football League and its member Franchises when a similar municipal taxpayer in Hamilton County, Ohio, purporting to sue "[o]n behalf of Hamilton County, Ohio," has standing to assert an antitrust claim against Appellees, The National Football League and its member Franchises in the identical antitrust action in the United States District Court for the Southern District of Ohio.

Answered in the negative by the District Court.

Answered in the negative by the Third Circuit Court of Appeals.

PARTIES TO THE PROCEEDING

Petitioner is Robert G. Warnock (hereinafter referred to as Warnock), a municipal taxpayer residing in the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania.

Defendants are the National Football League (hereinafter referred to as NFL) and member Franchises-- Arizona Cardinals Inc., d/b/a Arizona Cardinals; Atlanta Falcons Football Club LLC, d/b/a Atlanta Falcons; Baltimore Ravens Limited Partnership, d/b/a Baltimore Ravens; Buffalo Bills Inc, d/b/a Buffalo Bills; Chicago Bears Football Club Inc., d/b/a Chicago Bears; Pittsburgh Steelers Inc., d/b/a Pittsburgh Steelers LLC; Cleveland Browns LLC, d/b/a Cleveland Browns; Dallas Cowboys Football Club Ltd, d/b/a Dallas Cowboys; Denver Broncos Football Club, d/b/a Denver Broncos; Detroit Lions, Inc., d/b/a Detroit Lions; Green Bay Packers Inc., d/b/a Green Bay Packers; Houston NFL holdings LP, d/b/a Houston Texans; Indianapolis Colts; Jacksonville Jaguars Ltd., d/b/a Jacksonville Jaguars; Kansas City Chiefs Football Club Inc., d/b/a Kansas City Chiefs; Miami Dolphins; Minnesota Vikings Football Club LLC, d/b/a Minnesota Vikings; New England Patriots; New Orleans Saints LP, d/b/a New Orleans Saints; New York Football Giants, d/b/a New York Giants; New York Jets Football Club Inc., d/b/a New York Jets; Oakland Raiders LP, d/b/a Oakland Raiders; Panthers Football LLC, d/b/a Carolina Panthers; Philadelphia Eagles; Pittsburgh Steelers Sports, Inc., d/b/a Pittsburgh Steelers; San Diego Chargers Football Co., d/b/a San Diego Chargers; San Francisco 49ers Ltd., d/b/a San Francisco 49ers; Seattle Seahawks Inc., d/b/a Seattle Seahawks; St Louis Rams Football Co., St Louis Rams; Tampa Bay Buccaneers; Tennessee Titans LLP, d/b/a Tennessee Titans; Washington Football Inc., d/b/a Washington Redskins.

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IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT G. WARNOCK,

Petitioner

v.

NATIONAL FOOTBALL LEAGUE ET AL.,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this proceeding on November 9, 2005.

OPINION BELOW

The opinion of the Court of Appeals, reported at Warnock v. NFL, 2005 U.S. App. LEXIS 24167 appears in the appendix

JURISDICTION

The judgment of the court of appeals for the Third Circuit was entered on November 9, 2005. No Petition for Rehearing was filed and the Petition for certiorari was filed within 90 days of that date. This court's jurisdiction

is invoked pursuant to 28 USCS § 1254 which provides as follows:

STATUTORY PROVISION INVOLVED

This action arises under 28 U.S.C. §1331 (federal question jurisdiction):

> § 1331. Federal question
>
> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

15 U.S.C. § 1(Sherman Antitrust Act):

> § 1. Trusts, etc., in restraint of trade illegal; penalty
>
> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $ 100,000,000 if a corporation, or, if any other person, $ 1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

15 U.S.C. §15 (Clayton Act).

> §15. Suits by persons injured

(a) Amount of recovery; prejudgment interest. Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. ...

DATE OF JUDGMENT SOUGHT TO BE REVIEWED

Review of the Judgment of the United States Court of Appeals for the Third Circuit dated November 9, 2005 which affirmed the Order of the United States District Court for the Western District of Pennsylvania dismissing the Antitrust Complaint filed in this case. No motion for rehearing was filed in the Court of Appeals.

STATEMENT OF THE CASE

Two sports stadia, Heinz Field and Paul Brown Stadium, are on the Ohio River; Heinz Field is situate at the confluence of the Monongahela and Allegheny Rivers--the headwaters of the Ohio; the navigable distance between the two stadia is 471 miles;[1] the driving distance between the two cities is 283.93 miles.[2] The point at Pittsburgh is mile Zero—the headwaters of the Ohio River.

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[1] Source—Army Corp of Engineers, Louisville District, Ohio River Navigation Chart.

[2] Source–Mapquest.com

Petitioner is Robert G. Warnock (hereinafter referred to as Warnock), a municipal taxpayer residing in the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania. Defendants are the National Football League (hereinafter referred to as NFL) and member Franchises.

The opinion of the United States District Court for the Western District of Pennsylvania is found at *Warnock v. NFL*, 356 F. Supp. 2d 535 (W.D. Pa. 2005.) The opinion of United States Third Circuit Court of Appeals is found at 2005 U.S. App. LEXIS 24167

In Cincinnati, the United States District Court for the Southern District of Ohio is presiding over an antitrust case filed by a municipal taxpayer "on behalf of the County of Hamilton, State of Ohio" and is proceeding to trial; in Pittsburgh, in a case identical in all respects to the Ohio case save the name of the stadium and patterned after the case in Ohio, involving the same Defendants, alleging the same conduct, raising the same issues, and brought similarly by a municipal taxpayer, the United States District Court for the Western District of Pennsylvania, dismissed the case based on the identical Motion to Dismiss filed in Cincinnati. A panel of the Third Circuit Court of Appeals sitting in Philadelphia affirmed the District Court.

The Sixth Circuit Court of Appeals was presented an opportunity to preliminarily rule on the issue of municipal taxpayer standing via the NFL's Motion for Writ of Mandamus, an opportunity which was declined by the Sixth Circuit. The Sixth Circuit Court of Appeals denied the motion and the case is proceeding in Cincinnati.[3]

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[3] *In Re: National Football League; et al.*, Petitioners at No. 04-3919

For the past decade, American communities have spent billions of dollars to attract or retain NFL franchises. By contract—specifically, the NFL Constitution and Bylaws among league owners and the collective bargaining agreement between owners and players—NFL owners share most revenues with each other and with players through revenue-sharing formulas. With these agreements limiting their profits, NFL owners have exploited the league's monopoly power to increase their personal profits through stadium deals generating revenues that, by and large, owners keep for themselves.

NFL owners have structured the league to create an excess demand for teams among cities across the country. Owners keep league membership substantially lower than the number of cities or markets that can support an NFL franchise. By creating a system in which many cities that are viable franchise sites do not have teams, NFL owners have enormous leverage through competitive bidding for any franchise that becomes available, whether by expansion or relocation. As a consequence, just as NFL player salaries skyrocketed through player free agency, taxpayer subsidies for stadium construction skyrocketed because of "franchise free agency." This skyrocketing of taxpayer subsidies is in the face of skyrocketing franchise values: e.g., the Pittsburgh Steelers franchise increased from $325 million the year before Heinz Field opened to $525 million the year the stadium opened, and $825 million in the most recent year.[4]

Beginning in 1996 to the present, the NFL

(6th Cir. 2004)

[4] Source: Forbes.com annual review of NFL franchise values.